

IN THE SUPREME COURT OF THE STATE OF DELAWARE

LEROY HEFLEY,	§
	§
Defendant Below-	§ No. 648, 2009
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0709007937
Plaintiff Below-	§
Appellee.	§

Submitted: November 17, 2009

Decided: January 15, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 15th day of January 2010, upon consideration of the appellant's opening brief and the State's motion to affirm, it appears to the Court that:

(1) The appellant, Leroy Hefley, filed this appeal from the Superior Court's denial of his motion for postconviction relief. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of the opening brief that the appeal is without merit. We agree and affirm.

(2) The record reflects that Hefley was found guilty in November 2007, following a bench trial in the Court of Common Pleas, of disorderly conduct, terroristic threatening, criminal mischief, and harassment. At a

2008 restitution hearing, he was ordered to pay \$100.46 for damage he caused to the door of a DART bus. Hefley appealed his convictions to the Superior Court, which affirmed the Court of Common Pleas' judgment. Thereafter, Hefley filed an appeal to this Court, which was dismissed as untimely.

(3) In July 2009, Hefley filed a motion for postconviction relief in the Superior Court. The Superior Court summarily dismissed Hefley's motion. We find that decision entirely correct. Only a defendant who is in custody or subject to future custody under a sentence of the Superior Court is entitled to seek postconviction relief under Rule 61.¹ Hefley was convicted and sentenced by the Court of Common Pleas. As such, he is not entitled to seek relief under Superior Court Criminal Rule 61. Accordingly, the Superior Court did not err in summarily dismissing his motion.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

¹ See Del. Super. Ct. Crim. R. 61(a) (2009).